

CONVICTION WAS VOID

Constitution Was in Force, Says Estee.

JUDGE ESTEE yesterday morning granted the writ of habeas corpus in the case of Osaki Mankichi, holding that he had jurisdiction, that the constitution of the United States was in complete effect in the Hawaiian Islands upon the passage of the Newlands resolution, and that presentments by other than a grand jury, and conviction by less than a jury of twelve men, were municipal laws contrary to the constitution and therefore null and void, during the transition period. His ruling was directly contrary to that of the Supreme Court of Hawaii, and Deputy Attorney General Cathcart has already given notice of his intention to appeal from it.

Osaki was rearrested on a new charge yesterday, after his attorneys had spent nearly the entire morning in trying to evade the officers of the law. New writs for the remainder of the prisoners will be immediately applied for before Judge Gear who will no doubt follow the ruling of Judge Estee and order the release of the choice assortment of criminals now in prison. The men will be immediately rearrested, however, upon new charges, and must of necessity then be taken before a grand jury and re-indicted.

The Federal court room was crowded yesterday morning when Judge Estee delivered his opinion. Both Little and Gear adjourned court for the occasion, and with their respective juries were present. Both the circuit judges were given seats on the bench with Estee, as was Judge Dunston of Dayton, Ohio, who was present. Gear's face was wreathed in smiles from one ear to the other, as Judge Estee slowly proceeded with the reading of the decision, and as he referred to some particular part in which Gear was upheld, the latter exchanged broader grins with Davis, and fingered his moustache to hide his pleasure.

"I didn't have time to write a short opinion, as the statutes provide that it must be given five days after the briefs are filed," remarked Judge Estee as he began to read his decision.

It is given in full as follows:

OPINION OF THIS COURT.

This is an application for a writ of habeas corpus arising upon the petition of one Osaki Mankichi, a Japanese.

The evidence, oral and documentary, shows that on the 14th day of May, 1899, a presentment was filed against the petitioner by the then Circuit Judge of the First Circuit of the Territory of Hawaii, and without the intervention of a grand jury, charging him with the crime of murder; that afterwards in the May term of that Court, of the same year, he was tried on the said presentment and convicted of the crime of manslaughter in the first degree. The verdict was returned by nine out of the twelve jurors. On the 22nd day of May, 1899, he was by the said Court sentenced to twenty years' imprisonment at hard labor.

Petitioner now seeks his discharge upon the ground that he is being illegally imprisoned, because of the fact that he was not indicted by a grand jury, nor convicted by the unanimous verdict of a jury of twelve men, as is required by the Constitution of the United States, it being claimed that the Constitution of the United States was in force in these islands during the period covered by the trial, conviction and sentence of petitioner, and that Articles V, VI and VII of the Amendments to the Constitution were thus violated.

(1) The first point made by the Assistant Attorney General for the Territory is that this Court has no jurisdiction to act and determine upon the questions involved in this matter, because a writ of error should be sued out of the Supreme Court of the United States by the petitioner herein; that whatever may have been the action of the Territorial Courts, the United States Court ought not to interfere, that this case is not one of sufficient gravity to call for the intervention of this Court on habeas corpus.

This is a Federal question raised in a Territory of the United States governed by Federal law, under the Constitution and statutes of the United States. The authorities referred to by the Deputy Attorney General, sustaining his position against this Court's assuming jurisdiction in this proceeding, are not in point. Not one of the decisions cited relate to this class of cases. This Territory is under the control of Congress, and is not an independent State, with a Constitution and local statutes governing the trial and conviction or acquittal of persons charged with crime. Where a State is a party and where a constitutional question is involved, a writ of error should, save in exceptional cases, be sued out of the Supreme Court of the United States, because of the delicate nature of a conflict of state and national jurisdictions. Here there can be no such conflict. I have been unable to find any authorities of like import where a conviction is had in a Territory. Territorial action alone is involved here. The Courts which have considered this matter before are all Territorial Courts, the alleged conviction of the petitioner occurring under Territorial law.

It should be here said that the Territorial situation of Hawaii is peculiar. We are by land and sea over five thousand miles from the capital of our country, and practically the judicial officers of this Territory are beyond the imme-

COMING EVENTS CAST SHADOWS BEFORE



date range of all appellate judicial tribunals. So all judicial officers here should be especially interested in maintaining public law in this Territory and more particularly in maintaining the Constitution and statutes of the United States applicable hereto.

In this habeas corpus matter, there is a wide difference of opinion among the Territorial judges. Both the Supreme and Circuit Courts differ with each other, and the members of the Supreme Court differ among themselves; and especially so upon the question of the relation which this Territory bears to the Constitution and laws of the United States. For instance, the Supreme Court of this Territory held, in the very recent case of Honomu Sugar Co. vs. Sayewitz, 12 Haw., 96, that certain Amendments of the Constitution of the United States were not in force here between the 7th day of July, 1898, and the 14th day of June, 1899, namely, Articles V, VI, VII, and XIII, which Articles relate to indictment by a grand jury for infamous crimes, to a common law jury trial, and to the existence of slavery in this Territory of the United States. While the Supreme Court decided in the case of Ex Parte Edwards (13 Haw., 23), that no person could be put upon trial for an infamous crime in the Hawaiian Islands after August 12th, 1898 (the date of the raising of the American flag here), without having been first indicted by a grand jury, nor could he be convicted of such crime save by the unanimous verdict of a jury of twelve.

It was further held by the Supreme Court of the Territory on the 5th day of June, 1899, in the case of Spencer vs. Collector of Customs (12 Haw., 60), that Hawaii could register vessels, although the Territory was annexed to and formed a part of the United States.

This was practically overruled by the Attorney General of the United States, who, in a written opinion (22 Op. Atty. Gen., 578), instructed the Secretary of the Treasury that:

"With due respect to the judgment of the Supreme Court of Hawaii, I am unable to admit that an Hawaiian register can now be issued to a vessel and the flag of Hawaii, the usual token of registration, be flown by her."

From these decisions it is clear there is a wide divergence of opinion on the part of the members of the Supreme Court of the Territory, as to the constitutional question involved herein, and as to whether or not the people of this Territory were during the period between July 7th, 1898, and June 14th, 1899, living in an American Territory and subject to such laws as were not inconsistent with the Joint Resolution of Annexation "nor contrary to the Constitution of the United States."

The familiar rule of stare decisis does not seem to receive recognition by the Supreme Court of the Territory for that Court decides one way at one time and another way at other times upon questions of the gravest importance, and which cases involve identically the same principle. The very uncertainty of that Court's opinions tends to disturb and unsettle the public mind as to the Constitution and its application to the people of and conditions in this Territory, and is a strong inducement for this Court to exercise its discretion in taking jurisdiction of this proceeding.

(Section 753, Rev. Stats. U. S., 2nd ed.) "It is the duty of the Courts to be watchful of the Constitutional rights of the citizen." (Boyd vs. U. S., 116 U. S., 615.)

So constitutional provisions for the security of persons and property should be liberally construed. (Id., 635.)

As was said by the Supreme Court of the United States in the case of Walker vs. S. P. R. R. Co., 155 U. S., quoting from pages 595-6:

"We deem it unnecessary to consider the contention of defendant in error that the Territorial Courts are not courts of the United States, and that the Seventh Amendment is not operative in the Territories, for by the act of April 2, 1874, c. 80, § 28, Congress legislating for all the Territories, declared that no party shall be deprived of the right of trial by jury in cases cognizable at common law, and while this may not in terms extend all the provisions of the Seventh Amendment to the Territories, it does secure all the rights of trial by jury as they existed at common law."

If it be true that the Constitution and the act of Congress referred to in Walker vs. S. P. R. R. Co., supra, has been nullified by the local Territorial Courts, then there should be an immediate remedy.

The learned Assistant Attorney General on the argument pressed upon the attention of the Court the fact that on Oct. 20, 1900, this Court dismissed the petition for a writ of habeas corpus presented in the case of In Re Marshall on the ground of lack of jurisdiction. But in that case the petitioner had been convicted of a misdemeanor and no Federal question was involved; the Court then saying generally that "only in very rare and extreme cases will it review upon habeas corpus the judgments or verdicts found in the highest Territorial Courts of the Territory." And this Court is still of the same opinion.

The question now presented is, is this an exceptional case? I am compelled to believe that it is. Whatever the intention of the local Territorial Courts, their decisions upon this question are an attack upon the Constitutional rights of the citizen affecting life and liberty, which are thereby made insecure.

In view of all the circumstances, therefore, I think it would be in furtherance of public justice for me to exercise my discretion by assuming jurisdiction in this proceeding. I shall therefore consider the case under the writ.

The right of appeal in habeas corpus cases from the Territorial Circuit to the Territorial Supreme Court, this Court will not consider. That is a matter entirely within the province of the Territorial Courts.

So also as to the objections submitted in relation to Mr. Justice Perry sitting as one of the Appellate Judges in this case, originally tried by him while a Circuit Judge. That is largely a matter of discretion on his part, and I will not assume to question the wisdom of such discretion.

(2) Petitioner claims that he is in custody in violation of the Constitution of the United States, in that he was tried and convicted of an infamous crime without an indictment by a Grand Jury, and by a verdict of less than twelve jurors, i. e., by nine of the twelve jurors. The specific Articles of the Constitution claimed to have been violated by such conviction are Articles V, VI and VII of the Amendments thereto.

There is no question as to the infamous character of the crime with which he was charged.

The Joint Resolution of both Houses

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Appraisers Value the Island Steamers at \$550,000.

First Step Made Toward a Consolidation of Wilder and Inter-Island Companies.

FIVE hundred and fifty thousand dollars is the valuation placed upon the steamers of the Wilder's Steamship Company and the Inter-Island Steam Navigation Company by the three appraisers appointed a short time since to set a value on the moving stock. This valuation is arrived at with a view to placing the figures before the stockholders relative to the proposition to consolidate the two companies under one management. The Wilder's Steamship Company is capitalized for \$500,000 and the Inter-Island company for \$600,000. The valuation arrived at includes only the steamers of the two companies, divided as follows:

Wilder company—Steamers Kinau, Claudine, Helene, Maui, Lehua, Kalanani, Hawaii and Mokoli; total, eight vessels.

Inter-Island company—Mauna Loa, W. G. Hall, Hanalei, Mikahala, Nihau, James Makee, Ke Au Hou, Iwalei, Kaula, Waialeale, Noeau; total, eleven steamers. Also the schooner Fanny Adele.

Four of the Wilder steamers are steel, the rest wooden; all of the Inter-Island fleet are wooden vessels. In view of this fact, although the Inter-Island company has more vessels than the Wilder company, the valuation on the Wilder fleet is \$1,000 more than that of the Inter-Island.

In the combination of the runs of the various vessels, the Wilder company has a monopoly on the Molokai business, and generally is conceded to have that of Maui as well as the Hamakua-Hilo run. The Inter-Island company has much of the business of the leeward side of the island of Hawaii and has a monopoly of the Kaula-Nihau business.

The consolidation is proposed in order that the expenses of maintaining two managements may be eliminated and cut down by having but one management for the two companies. Both companies claim they are not making any money. The presidents of the two companies held conferences several weeks since and the appointment of appraisers followed. The matter will be laid before the directors in joint session before any action will be taken toward a consolidation.

Latest Sugar Prices.

NEW YORK, Sept. 4.—Sugar—Raw, dull, easy; fair refining, 3 1/4c; centrifugal, 96 test, 3 12-16c; molasses sugar, 3c; refined, steady; crushed, 3 1/2c; powdered, 3 1/2c; granulated, 3 1/2c.

FLOOD IN CHINA.

NEW YORK, Sept. 4.—The Christian Herald has received the following from Rev. Arthur H. Smith, of Tientsin, chairman of the Famine Relief Committee:

"CHIEFHO, Sept. 3.—Terrible Yangtze floods. Dr. Richard and others approve Shanghai committee of Chinese and foreigners, embracing consuls, merchants, missionaries, distribute relief. If funds not all required at Shanghai, then transfer to Yangtze."

(Signed) SMITH.

Several hours later a second cablegram was received, as follows:

"Dr. Duncan wires one-third population dead. Shanghai forming Yangtze relief committee."

(Signed) SMITH.

Shanghai is situated at the mouth of the Wong Poo river, twelve miles above the mouth of the Woo Sung, in the estuary of the Yangtze-Kiang. It stands on a level and highly cultivated plain and is in no danger from floods. It is believed that Dr. Duncan refers to floods in the Yangtze-Kiang valley, which occurred on July 24th. According to Associated Press dispatches received at the time, several thousand persons were drowned.

STORM IN JAPAN.

YOKOHAMA, Aug. 21 (via Victoria, B. C., September 3).—To say that a "horrible" storm has been stirred up in Japan would but mildly express the news of the alleged outrageous treatment of Japanese ladies on the Nippon Maru by quarantine officers of Hawaii. Nothing in the course of all the relations between America and Japan has aroused such press indignation or such strong popular feeling. Whatever else this nation may be, it is an eminently self-respecting nation, and the enormities recently passed upon it by western peoples have accentuated the feeling to an extraordinary degree.

That which cuts the deepest is the discrimination which was made between foreign ladies and the Japanese, and the incident thus shows clearly what difficulties are before the American government should this people be discriminated against in the framing of immigration laws. Any such measure would also destroy the extraordinarily friendly relations which have always existed between the two governments.

AMERICA MAKES REPLY.

LONDON, Sept. 2.—"The United States government has replied in a sympathetic and friendly tone," says a dispatch to the Times from Tokyo, dated Saturday, "to Japan's remonstrance regarding medical inspection of Japanese in Hawaii, promising that investigation shall be followed by suitable measures."

Officers of the British cruiser Phaeton claim to have seen many dead and dying on the Panama battlefields.

W. K. Vanderbilt was arrested in Holland as an anarchist because of his anxiety to see Queen Wilhelmina.

Ex-Empress Frederick left a fortune of 11,000,000 marks. The youngest daughter gets the bulk of the estate.

Lord Kitchener reports nine persons killed and seventeen wounded by the blowing up of a train by the Boers.

WEALTH OF THE EAST

Philippines Will Prove a Great Boon.

H. DIETRICH, junior senator and former governor of Nebraska, is one of the passengers in the Nippon Maru. He is accompanied by his daughter and has just come from a visit to the Philippines. Senator Dietrich was one of the party which went out with Adjutant General Corbin and went all over the group of islands during their stay. The party had intended to stop here on the way out, but just as the transport had loaded and was ready to start for this port, there was prevalent in San Francisco a report that there was plague here, and as a result the load of merchandise for here was taken out of the ship, and the voyage was made to Manila direct. Speaking of the work being done in the Philippines, Senator Dietrich said last evening:

"The future of the islands is safe in the hands of the men who are in authority there and I believe that the country will prove a great thing for the United States. Of course all depends upon the government but where the civil authority has been inaugurated by Judge Taft, it is working well and the people seem to be contented, and I believe will be prosperous. Wherever we went we saw the people plowing up lands which had been without cultivation for three years during the war and this land will be put into rice and hemp at once, and the result will be that the old time trade of the country will be restored."

"The country is rich beyond question and the need is that Americans go in and develop it. This will be done without doubt and the people will find that there is great wealth waiting to be exploited. There is no reason why an American cannot live in that country and the trade which will come from our occupation of the archipelago will be sufficient to attract any number of American business houses in the near future. At the present time there is a decided growth in the trade of the islands and the Americans are getting their share of it. Of course there is still much of the country that is under the military rule, and the fighting is not over in some parts of the islands, but this will not last long as the outlook is for peace very soon."

"The hope of the country lies in an honest administration of the government, and this we believe will follow the course of the administration as at present being inaugurated by the Taft Commission. There may be a chance that in the rush for places the islands may be filled with too many office holders. But this will work itself out and the administration of the islands will be of the true American sort, which will be a revelation to the people there."

"During our visit through the islands we were of course brought into close touch with the army, and Gen. Corbin spent his time in the inspection of it and the workings of the various departments. He was much pleased with the army as he saw it and we all were convinced that there was nothing to be desired in the methods of the commander. Gen. Chaffee is surely the right man for the place and his course is one which will result in a cessation of hostilities as soon as they can be brought to an end."

"As to the future of the islands I believe that there is much to be done in the way of opening up the many sources of wealth. The people must of course be the workers for a long time, and the Americans who will be attracted there will be the directors of the enterprises. The people are not as industrious as the Chinese or Japanese, but they work in the fields and make a good showing so far as they go. They will improve under the rule which is now being established and I believe that the longer the islands are in our hand the better we will be pleased with the returns from them."

"American capital can find investment there and the result will be that much of the trade of the East will come to this country through contact with the business houses which will have their distributing centers there."

"I am very sorry that I could not spend some time here but the missing of a connection on our way made it impossible, as I must get back so that my daughter may enter her school on October 1st. I shall try and see all that is possible here during tomorrow. Capt. Slaker of the artillery is a relative, and I shall go about the city, though I will not be able to see what I had hoped of Pearl Harbor and the proposed site for the naval station. There is of course much interest in Hawaii and I had hoped to be able to become acquainted with the islands, as that I might know just what might be needed here and could knowingly vote upon the questions which will arise."